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UNCLAS SECTION 01 OF 02 DJIBOUTI 000090

SIPDIS

STATE FOR AF AND AF/E;
LONDON, PARIS FOR AFRICA WATCHER;

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SUBJECT: DJIBOUTI TAKES FRANCE TO
INTERNATIONAL COURT OF JUSTICE

REF: 05 DJIBOUTI 1069

04 DJIBOUTI 1372

04 DJIBOUTI 1084

04 DJIBOUTI 585

1. (U) SUMMARY: On January 10 Djibouti formally requested mediation by the International Court of Justice (ICJ) between itself and France over the long-standing and thorny Judge Bernard Borrel Affair (see refelts). The Government of Djibouti (GoD) alleges that France violated its "international obligations in respect to mutual assistance in criminal matters" in the investigation into the 1995 death in Djibouti of the French judge. For more than ten years the case has remained open amid Mrs. Borrel's claims that members of the Government of Djibouti assassinated her husband. She claims he was killed after he uncovered information which incriminated Djiboutian officials in the 1990 bombing of the Caf de Paris in Djibouti City. END SUMMARY

2. (U) The alleged suicide of French magistrate, Bernard Borrel, in 1995 in Djibouti, remains a volatile subject in Djibouti-France relations. The issue of the death of the French magistrate, and discovery of his body 80 Km north of Djibouti in 1995, has surfaced once again in the local media. In February 2005, France's Ministry of Justice agreed to hand over the case file to Djiboutian judicial authorities. However, French judge Sophie Clement refused to comply. In her refusal, Clement stated that French authorities had no right to hand over secret documents to "a foreign political authority" arguing that to do so would "compromise the fundamental elements of national interest [of France] and [France's] agents".

3. (U) A press release issued by the ICJ declared: "In an application filed in the Registry of the Court on 9 January 2006, Djibouti states that the subject of the dispute concerns the refusal by the French governmental and judicial authorities to execute an international letter rogatory regarding the transmission to the judicial authorities in Djibouti of the record relating to the investigation in the Case against X for the murder of Bernard Borrel." Djibouti maintains that the refusal constitutes a violation of France's international obligations under the Treaty of Friendship and Cooperation signed by the two States on 27 June 1977, and the Convention on Mutual Assistance in Criminal Matters between France and Djibouti, dated 27 September 1986. Djibouti further asserts that, by summoning certain internationally protected nationals of Djibouti (including the Head of State) as witnesses in connection with a criminal complaint for subornation of perjury in the Borrel case, France violated its obligation to prevent attacks on the person, freedom or dignity of persons with diplomatic protection.

4. (U) On September 30, 2004 the Court of Versailles summoned the Procureur de la Republique (Attorney General of Djibouti), Djama Souleiman, and Hassan Said, head of Djibouti's National Security Service (NSS), to appear before the examining French magistrate to respond regarding a complaint entered by the widow of Bernard Borrel. In response to the summoning of the judge,

Djama Souleiman said in an interview, reproduced in Djibouti's state-run newspaper "La Nation" on October 4, 2004, "French magistrates forget easily that Djibouti is an independent and sovereign country. They still think Djibouti is a French territory. There is a judicial agreement between Djibouti and France since September 27 1986 and if they want to call me, they have to go through that procedure". He highlighted that each country must respect the legal procedures of that agreement.

15. (U) Article 38, paragraph 5, of the Rules of Court states "When the Applicant State proposes to found the jurisdiction of the Court upon a consent thereto yet to be given or manifested by the State against which such application is made, the application shall be transmitted to that State. It shall not however be entered in the General List, nor any action be taken in the proceedings, unless and until the State against which such application is made consents to the Court's jurisdiction for the purposes of the case." In accordance with this Article, the Application by the Republic of Djibouti was transmitted to the French Government and no action will be taken in the proceedings unless and until France consents to the Court's jurisdiction in the case.

16. (U) The Djiboutian Ministry of Foreign Affairs, Mahmoud Ali Youssouf stated in a public communiqué following referral to the ICJ: "Djibouti has engaged international lawyers who will defend our case". Sources indicate that one of the international lawyers is American. Nevertheless, the Minister said that the Court's decision will not negatively influence "good relations" between the two nations.
RAGSDALE